

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MCLAUGHLIN,

Plaintiff,

-against-

PHILIP MORRIS, USA, INC.,
et al.,

Defendant.

:
: 04-CV-1945 (SMG) (JBW)
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:
: United States Courthouse
: Brooklyn, New York
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:
: November 18, 2005
: 2:00 p.m.
:
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TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE STEVEN M. GOLD
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Plaintiff:

COHEN, MILSTEIN, HAUSFELD
& TOLL, P.L.L.C.
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BY: PAUL T. GALLAGHER, ESQ.
MICHAEL D. HAUSFELD, ESQ.
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For the Defendant:
Philip Morris USA, Inc.

ARNOLD & PORTER, LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206
BY: MURRAY R. GARNICK, ESQ.
THEODORE M. GROSSMAN, ESQ.
JUDITH BERNSTEIN-GAETA, ESQ.

For the Defendant:
Lorillard Tobacco Co.

GREENBERG TRAURIG
Met Life Building
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New York, New York 10166

Status Conference

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1 If you want to add to what's in the letter, that's fine,
2 but I feel equipped by your submission to lead the
3 discussion. If you'll allow me to start, but if I'm
4 overlooking something that's happened since be happy to
5 interject.

6 MR. GROSSMAN: I don't think you're overlooking
7 anything. We have everything in the letter, a chronology
8 of the requests that we've made and, in fact, the
9 materials that we've requested which have not been
10 submitted. I can enumerate those but we're trying to work
11 it out with the plaintiffs, so I think --

12 THE COURT: Does anybody feel -- do the
13 plaintiffs feel that it is ripe and to the point where you
14 like the Court's ruling?

15 MR. GALLAGHER: We're well on the way we've.
16 Produced almost everything and the remainder can be
17 resolved between the parties.

18 MR. GROSSMAN: And, of course, Dr. Hauser will
19 be submitting a new opinion as well. I assume on December
20 15th.

21 THE COURT: Well, your letter says the 17th
22 which makes me think the 15th is a weekend, so let's
23 change everything to the 17th because if it's
24 Mr. Grossman's letter I'm sure it is a date.

25 MR. GROSSMAN: The 15th would work.

Status Conference

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1 THE COURT: The 19th?

2 MR. GROSSMAN: That's fine.

3 THE COURT: That's what I get for relying
4 upon --

5 MR. GROSSMAN: On me.

6 THE COURT: -- a large firm's expertise at these
7 technicalities over the small chambers that we struggle
8 along with. Okay, so let's change the 17th to the 19th
9 and I'm not sure whether I should address my questions to
10 Mr. Hauser or to Mr. Gallagher, but is December 19th for
11 Dr. Hauser's new report still a date you anticipate
12 meeting?

13 MR. GALLAGHER: Yes, we think we can meet that
14 date, Your Honor.

15 THE COURT: Great. Let's go through and deal
16 with all the report dates and then we can go back and talk
17 about the depositions.

18 Again, treating December 17th as December 19th,
19 do we have the same expectations with Dr. Beyer and are
20 there any reliance material debates that you anticipate
21 that you would like to tell me about now or are they best
22 reserved for further discussion if need be?

23 MR. GARNICK: That both Dr. Hauser and
24 Dr. Harris' reliance materials obviously will take the
25 form in part of electronic analysis and that kind of thing

Status Conference

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1 which Your Honor has spelled out what reliance materials
2 will be included and it will be very important for us to
3 get that material as soon as possible since, especially
4 with respect to Hauser and Beyer, the report tells us very
5 little. It's the reliance materials --

6 THE COURT: These are the statistical models?

7 MR. GARNICK: Yes, Your Honor.

8 THE COURT: I understand that and the record
9 reflects your emphasis upon it. Give me just a minute,
10 it's too much for me to memorize, so give me a moment to
11 read your paragraph about Dr. Harris if you would.

12 (Pause.)

13 THE COURT: Have the defendants now received the
14 back-up materials that are referenced here?

15 MR. GROSSMAN: We have received some, Your
16 Honor. We have received the materials that Dr. Harris
17 himself generated, but his report is explicitly predicated
18 upon Dr. Hauser's study.

19 If you go back, if you recall in his earlier
20 reports of February 28th and March 28th, Dr. Harris had
21 two calculations, two separate calculations. One was
22 called "A Loss of Market Model Calculation," the other was
23 called "A Loss of Value Calculation."

24 The loss of value was based upon an Internet
25 survey conducted by Knowledge Networks and we took